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HOUSE BILL 682

**48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007**

INTRODUCED BY

John A. Heaton

AN ACT

RELATING TO MINING; AMENDING, REPEALING AND ENACTING SECTIONS  
OF CHAPTER 69 NMSA 1978 TO PROVIDE FOR MINE SAFETY AND  
ENFORCEMENT OF MINE SAFETY LAWS AND RULES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 69-1-6 NMSA 1978 (being Laws 1979,  
Chapter 68, Section 3, as amended) is amended to read:

"69-1-6. STATE MINE INSPECTOR DUTIES--STATUS.--

A. The state mine inspector is assigned to the New  
Mexico institute of mining and technology.

B. The board of regents of the New Mexico institute  
of mining and technology and the mining safety board may  
recommend the names of qualified individuals to the governor  
for appointment as the state mine inspector.

C. In addition to those duties assigned to the

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1 state mine inspector by the board of regents of the New Mexico  
2 institute of mining and technology, by the mining safety board  
3 and by statute, the state mine inspector shall cooperate with  
4 the director of the mining and minerals division of the energy,  
5 minerals and natural resources department to assist the  
6 director in the performance of the director's duties."

7 Section 2. Section 69-5-7 NMSA 1978 (being Laws 1933,  
8 Chapter 153, Section 14, as amended) is amended to read:

9 "69-5-7. DUTIES--STATE MINE INSPECTOR--DIRECTOR OF MINING  
10 AND MINERALS.--

11 A. The state mine inspector shall:

12 [~~(1) proceed without delay to any mine within~~  
13 ~~the state when he learns of any explosion or other catastrophe~~  
14 ~~in a mine by which lives of mine workers are jeopardized or in~~  
15 ~~which fatalities have occurred and render such aid as he can in~~  
16 ~~the rescue of persons within the mine and in the protection of~~  
17 ~~rescuers from danger;~~

18 ~~(2) give written notice that the mine is~~  
19 ~~unsafe to the owners, operators or managers of any mine wherein~~  
20 ~~he finds improper construction or that the mine is not~~  
21 ~~furnished with reasonable and proper machinery and appliances~~  
22 ~~for the safety of miners and other employees, stating in what~~  
23 ~~particular the mine is unsafe and require the owners, operators~~  
24 ~~or managers to provide any additional machinery, slopes,~~  
25 ~~entries, shafts, drifts, means of escape, ventilation or other~~

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1 ~~appliances necessary to the safety of miners and other~~  
2 ~~employees of the mine within a period to be named in the~~  
3 ~~notice;~~

4 ~~(3) inspect and pass upon the adequacy and~~  
5 ~~safety of all hoisting apparatus in mines and may demand a test~~  
6 ~~of safety catches or clutches upon the hoisting apparatus as~~  
7 ~~often as once in every three months or whenever he believes the~~  
8 ~~hoisting apparatus is defective;]~~

9 (1) develop and maintain mine safety and  
10 health training programs;

11 (2) upon notification of any explosion or  
12 other catastrophic event at a mine in which the lives of mine  
13 workers are jeopardized or in which fatalities have occurred,  
14 allocate available resources within a twenty-four-hour time  
15 period to assist the mine operator in the rescue of persons and  
16 the subsequent accident investigation;

17 (3) upon request from any operator, provide  
18 compliance assistance to include on-site audits to any mine or  
19 mine operator within the state to aid in the health and safety  
20 of mine workers and mine operators;

21 (4) [arrange] support and maintain a uniform  
22 system of mine bell signals and furnish a copy of the signal  
23 system to each underground mine operator within the state.

24 [and (5)] Automated hoists shall be exempt from compliance with  
25 the bell signal requirements;

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1                   (5) implement a program of certifying mine  
2 personnel as provided by law; and

3                   (6) make a report to the governor on or before  
4 June 1 of each year, which report covers the preceding calendar  
5 year and contains a review of the official acts of the  
6 inspector.

7                   B. The director of the mining and minerals division  
8 of the energy, minerals and natural resources department shall:

9                   (1) cooperate with the state mine inspector to  
10 assist [~~him~~] the state mine inspector in the performance of  
11 [~~his~~] the state mine inspector's duties, including providing  
12 [~~him~~] the state mine inspector with mine registration and other  
13 information collected by the department;

14                   (2) provide an annual resources report to the  
15 governor that shall include statistics of the number of persons  
16 employed in mining, the production and value thereof; and

17                   (3) have right of entry to the mines as may be  
18 required to fulfill [~~his~~] the director's statutory duties."

19                   Section 3. Section 69-5-9 NMSA 1978 (being Laws 1933,  
20 Chapter 153, Section 15) is amended to read:

21                   "69-5-9. INSPECTIONS--RIGHT OF ENTRY--OPERATOR'S  
22 REPRESENTATIVE--The state mine inspector is given authority at  
23 all reasonable times to:

24                   A. enter and inspect any mine in the state [~~and the~~  
25 ~~workings and machinery belonging thereto~~] in such manner as not

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1 to impede or obstruct the workings of the mine [~~to make inquiry~~  
2 ~~into the state of the mine, works and machinery thereof, the~~  
3 ~~ventilation and mode of lighting the same and all matters and~~  
4 ~~things connected with and relating to the safety of the~~  
5 ~~employees in and about the mines, and especially to the end~~  
6 ~~that the provisions of law shall be complied with by the~~  
7 ~~operators and employees thereof, to require that some person of~~  
8 ~~practical experience and responsibility representing the~~  
9 ~~operator shall accompany the said inspector upon such trips of~~  
10 ~~inspection through the mine in order that the inspector may~~  
11 ~~point out and specify any defects in the mine, in the methods~~  
12 ~~of mining and in the equipment and construction thereof, which~~  
13 ~~may violate any of the provisions of law]; and [~~to~~]~~

14 B. require that the mine owner, operator or manager  
15 [~~shall~~] at all times furnish means necessary for such entry,  
16 inspection, examination and inquiry."

17 Section 4. Section 69-5-10 NMSA 1978 (being Laws 1933,  
18 Chapter 153, Section 16) is amended to read:

19 "69-5-10. COMPLIANCE ASSISTANCE VISIT RECORD--OPERATOR'S  
20 COPY--The state mine inspector shall make an entry of record  
21 in [~~his~~] the state mine inspector's office [~~of the time and~~  
22 ~~material circumstances~~] of each [~~inspection~~] compliance  
23 assistance visit and shall [~~upon the request of the operator~~]  
24 furnish [~~him~~] the operator a copy thereof."

25 Section 5. Section 69-5-14 NMSA 1978 (being Laws 1933,

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1 Chapter 153, Section 20, as amended) is amended to read:

2 "69-5-14. ORDERING DANGEROUS CONDITIONS IN MINES REMOVED  
3 OR REMOVAL OF WORKERS FROM DANGER ZONES.--When any mine or  
4 portion of a mine or machine, device, apparatus or equipment  
5 pertaining [~~thereto~~] to a mine, in the judgment of the state  
6 mine inspector, is in so dangerous a condition from any cause  
7 or creates such a hazard as to jeopardize life or health, [~~he~~]  
8 the state mine inspector shall at once direct the management or  
9 operator of the mine to remove the dangerous condition or  
10 safeguard the equipment [~~forthwith~~]. Should the state mine  
11 inspector find during [~~his~~] inspection of the mine [~~such~~] a  
12 dangerous condition existing [~~therein~~] in the mine that [~~in his~~  
13 ~~opinion, any delay in removing the workers from such dangerous~~  
14 ~~places or from the entire mine~~] might cause loss of life or  
15 serious personal injury to the employees, the state mine  
16 inspector has the right to require [~~the representative of~~] the  
17 operator [~~accompanying the inspector~~] to immediately withdraw  
18 all persons from [~~such~~] the dangerous places or from the entire  
19 mine. In the event the [~~management or operator of the mine or~~  
20 ~~the representative of the~~] operator fails or refuses to  
21 immediately comply with the requirements or instructions of the  
22 state mine inspector, the state mine inspector [~~may issue an~~  
23 ~~order closing all or any portion of the mine to regular~~  
24 ~~operations. Such an order, based on any one cause, expires~~  
25 ~~within twenty-four hours, Sundays and holidays excepted, unless~~

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1 ~~the inspector, through the district attorney for the district~~  
2 ~~in which the mine is located, has applied to the district court~~  
3 ~~for a restraining order or injunction] shall notify a~~  
4 representative of the miners and the mine safety and health  
5 administration immediately."

6 Section 6. Section 69-5-17 NMSA 1978 (being Laws 1933,  
7 Chapter 153, Section 23, as amended by Laws 2006, Chapter 102,  
8 Section 2 and by Laws 2006, Chapter 106, Section 2) is amended  
9 to read:

10 "69-5-17. FATAL AND SERIOUS MINE ACCIDENTS--  
11 ASSISTANCE--INVESTIGATION--NOTIFICATION--CIVIL PENALTY.--

12 A. The state mine inspector shall proceed  
13 immediately upon notification to the site of any mine accident  
14 causing the loss of life or requiring activation of a mine  
15 rescue team and shall assist in the rescue of persons within  
16 the mine [~~investigate the causes of the accident, conduct a~~  
17 ~~closeout conference and make necessary recommendations for the~~  
18 ~~present and future safety of the miners. So far as possible,~~  
19 ~~the operator shall not change the surroundings of an accident~~  
20 ~~until the state mine inspector has made an investigation;~~  
21 ~~provided, however, that the investigation is made within a~~  
22 ~~reasonable time]. The state mine inspector shall participate  
23 in the accident investigation with any other federal, state and  
24 local agency and company representatives.~~

25 B. Whenever an accident occurs in or about a mine

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1 or the machinery connected to a mine, the operator of the mine  
2 shall give notice within thirty minutes of ascertaining the  
3 occurrence of the accident to the mine accident emergency  
4 operations center at the statewide telephone number established  
5 by the state mine inspector stating the particulars of the  
6 accident.

7 C. Nothing in this section shall be construed to  
8 relieve the operator of the mine from any reporting or  
9 notification requirement under federal law.

10 D. As used in this section, "accident" means  
11 "accident" as provided in 30 C.F.R. 50.2.

12 E. The state mine inspector shall impose a civil  
13 penalty of up to one hundred thousand dollars (\$100,000) on the  
14 operator of the mine if it is determined that the operator  
15 failed to give immediate notice as required in this section.  
16 The inspector may waive imposition of the civil penalty at any  
17 time if the inspector finds that the failure to give immediate  
18 notice was caused by circumstances outside the control of the  
19 operator.

20 F. The penalties imposed by the state mine  
21 inspector for violations of this section shall be derived from  
22 criteria-based penalty points. A penalty conversion table  
23 developed by the state mine inspector shall serve as a guide  
24 for determining penalty assessments."

25 Section 7. A new section of Chapter 69, Article 5 NMSA

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1 1978 is enacted to read:

2 "[NEW MATERIAL] ATTORNEY GENERAL.--The attorney general  
3 shall appoint a counsel as needed to support the enforcement of  
4 the state mine inspector's office and the duties of the state  
5 mine inspector and the bureau of mine safety."

6 Section 8. Section 69-8-2 NMSA 1978 (being Laws 1961,  
7 Chapter 136, Section 2) is amended to read:

8 "69-8-2. DEFINITIONS.--As used in the Mining Safety Act:

9 A. "accident", pursuant to 30 C.F.R. 50.2, means:

10 (1) a death of an individual at a mine;

11 (2) an injury that has a reasonable potential  
12 to cause death to an individual at a mine;

13 (3) an entrapment of an individual for more  
14 than thirty minutes or that has a reasonable potential to cause  
15 death;

16 (4) an unplanned inundation of a mine by a  
17 liquid or gas;

18 (5) an unplanned ignition or explosion of gas  
19 or dust;

20 (6) an unplanned mine fire in an underground  
21 mine that is not extinguished within ten minutes of discovery  
22 and an unplanned mine fire within a surface mine or surface  
23 area of an underground mine that is not extinguished within  
24 thirty minutes;

25 (7) an unplanned ignition or explosion of a

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1 blasting agent or an explosive;

2 (8) an unplanned roof fall at or above the  
3 anchorage zone in active workings where roof bolts are in use  
4 or an unplanned roof or rib fall in active workings that  
5 impairs ventilation or impedes passage;

6 (9) a coal or rock outburst that causes  
7 withdrawal of miners or that disrupts regular mining activity  
8 for more than one hour;

9 (10) an unstable condition at an impoundment,  
10 refuse pile or culm bank that requires emergency action in  
11 order to prevent failure or that causes individuals to evacuate  
12 an area or failure of an impoundment, refuse pile or culm bank;

13 (11) damage to hoisting equipment in a shaft  
14 or slope that endangers an individual or that interferes with  
15 use of the equipment for more than thirty minutes; or

16 (12) an event at a mine that causes death or  
17 bodily injury to an individual not at the mine at the time the  
18 event occurs;

19 ~~[A.]~~ B. "employer" includes any person acting  
20 directly or indirectly in the interest of an employer in  
21 relation to an employee or to a place of employment;

22 ~~[B.]~~ C. "employee" means any person suffered or  
23 permitted to work in a mining occupation or pursuit by an  
24 employer;

25 D. "mine", pursuant to 30 C.F.R. 50.2, means:

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1                   (1) an area of land from which minerals are  
2 extracted in nonliquid form or, if in liquid form, are  
3 extracted with workers underground;

4                   (2) private ways and roads appurtenant to an  
5 area described in Paragraph (1) of this subsection; and

6                   (3) lands, excavations, underground  
7 passageways, shafts, slopes, tunnels and workings, structures,  
8 facilities, equipment, machines, tools or other property,  
9 including impoundments, retention dams and tailings ponds, on  
10 the surface or underground, used in, to be used in or resulting  
11 from, the work of extracting such minerals from their natural  
12 deposits in nonliquid form, or if in liquid form, with workers  
13 underground, or used in, or to be used in, the milling of such  
14 minerals, or the work of preparing coal or other minerals, and  
15 includes custom coal preparation facilities;

16                   E. "operator", pursuant to 30 C.F.R. 50.2, means:

17                   (1) any owner, lessee or other person that  
18 operates, controls or supervises a coal mine; or

19                   (2) the person, partnership, association or  
20 corporation, or subsidiary of a corporation, operating a metal  
21 or nonmetal mine and owning the right to do so, including any  
22 agent thereof charged with responsibility for the operation of  
23 such mine;

24                   ~~[E.]~~ F. "person" means an individual, partnership,  
25 association, corporation, business trust, receiver, trustee,

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1 legal representative or successor to any of the foregoing;

2 ~~[D-]~~ G. "place of employment" means any place in or  
3 about which the employee is suffered or permitted to work;

4 ~~[E-]~~ H. "mining occupations or pursuits" includes  
5 mining, smelting and the operation of a mill, ore house or  
6 treatment plant in which ore or rock is processed; and

7 ~~[F-]~~ I. "inspector" means the state mine  
8 inspector."

9 Section 9. Section 69-8-3 NMSA 1978 (being Laws 1961,  
10 Chapter 136, Section 3, as amended) is amended to read:

11 "69-8-3. MINING SAFETY ~~[ADVISORY]~~ BOARD.--

12 A. There is created a "mining safety ~~[advisory]~~  
13 board", referred to in Chapter 69, Article 8 NMSA 1978 as the  
14 "board", consisting of thirteen members. ~~[of whom six shall~~  
15 ~~represent industry, six shall be nonsupervisory production or~~  
16 ~~maintenance employees and one, who shall serve as chairman and~~  
17 ~~vote on all motions, shall represent the public and shall be~~  
18 ~~the director of the bureau of geology and mineral resources.~~  
19 ~~Two]~~ The members of the board shall ~~[be appointed from each of~~  
20 ~~the following industries: coal, copper, molybdenum, potash,~~  
21 ~~sand and gravel and uranium]~~ represent coal, metal-nonmetal and  
22 sand and gravel operations throughout New Mexico. The members  
23 of the board shall be appointed by the governor for terms of  
24 six years or until their successors are appointed and  
25 qualified. Vacancies shall be filled by appointment for the

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1 unexpired term by the governor in the same manner as the  
2 original appointments. Members absent for three or more  
3 consecutive meetings shall be considered inactive. The chair  
4 of the board shall ask the governor's office to appoint a new  
5 member to the board if a current member becomes inactive. The  
6 inspector and the secretary of energy, minerals and natural  
7 resources shall be ex-officio members of the board but shall  
8 have no vote [~~and receive no additional compensation for duties~~  
9 ~~performed in connection with the board~~].

10 B. [~~Members of the board and committees appointed~~  
11 ~~by the board shall receive no salary but shall receive~~  
12 ~~compensation in accordance with the provisions of the Per Diem~~  
13 ~~and Mileage Act.~~] The inspector is authorized and directed to  
14 provide the board with such clerical, technical, legal and  
15 other assistance as shall be necessary to permit the board to  
16 perform its duties as provided in the Mining Safety Act.

17 [~~G. The board shall hold two regular meetings each~~  
18 ~~year in the second and fourth quarters of the calendar year, at~~  
19 ~~places within this state to be determined by the board.~~  
20 ~~Special meetings may be called at any time by the governor, the~~  
21 ~~chairman or the inspector or by any three board members.~~  
22 ~~Complete minutes and records of all board meetings, proceedings~~  
23 ~~and actions shall be kept and preserved.]"~~

24 Section 10. Section 69-8-4 NMSA 1978 (being Laws 1985,  
25 Chapter 68, Section 3) is amended to read:

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1 "69-8-4. DUTIES OF THE BOARD--RULEMAKING.--

2 A. The board [~~shall formulate and propose after a~~  
3 ~~public hearing general rules and regulations and reasonable~~  
4 ~~safety or health standards for the prevention of accidents and~~  
5 ~~occupational diseases in every mine operated in this state.~~  
6 ~~The proposed standards, rules and regulations shall be~~  
7 ~~submitted to the inspector for his consideration and shall be~~  
8 ~~accompanied by a report indicating the need for the proposals,~~  
9 ~~a summary of the public hearing and any other pertinent~~  
10 ~~information available to the board. Proposed safety or health~~  
11 ~~standards, rules and regulations and the report shall be~~  
12 ~~approved by a quorum of the board; provided that the quorum~~  
13 ~~shall include the chairman, three industry members and three~~  
14 ~~employee members] may, after public hearing, adopt rules for  
15 the protection of the life and safety of employees and to carry  
16 out the intent of the Mining Safety Act. The board may appoint  
17 a special committee of employers, employees and experts to  
18 assist in the development of proposed [~~standards~~] rules [~~and~~  
19 ~~regulations~~]. The inspector may make recommendations to the  
20 board as necessary to carry out the intent of the Mining Safety  
21 Act.~~

22 [~~B. The inspector, within thirty days after the~~  
23 ~~receipt of any proposed standards, rules or regulations, shall~~  
24 ~~accept, adopt and issue them or shall refer them back to the~~  
25 ~~board, with an explanation for his rejection, for further~~

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1 ~~consideration and revision.~~

2 ~~G. A set of standards, rules and regulations shall be~~  
3 ~~formulated, proposed and adopted for the coal mining industry,~~  
4 ~~and a set of standards, rules and regulations shall be~~  
5 ~~formulated, proposed and adopted for the noncoal mining~~  
6 ~~industry.]~~

7 B. Notice of the subject, time and place of the  
8 hearing, the manner in which interested persons may present  
9 their views and the method by which copies of the proposed rule  
10 may be obtained shall be:

11 (1) published at least thirty days prior to the  
12 hearing date in a newspaper of general circulation in the state  
13 and in the New Mexico register, if published; and

14 (2) mailed at least thirty days prior to the  
15 hearing date to all persons that have made a written request to  
16 the board or the inspector for advance notice of hearings.

17 C. The board shall allow all interested persons  
18 reasonable opportunity to submit data, views or arguments  
19 orally or in writing. The board may designate a hearing  
20 officer to take evidence in the hearing. Any person that  
21 provides comments shall be given written notice of the action  
22 of the board.

23 D. All rules and regulations shall be filed in  
24 accordance with the State Rules Act."

25 Section 11. A new section of the Mining Safety Act is

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1 enacted to read:

2 "[NEW MATERIAL] DUTIES OF THE BOARD--APPEAL OF  
3 CERTIFICATION ACTIONS BY INSPECTOR.--

4 A. A person who is the subject of an action of the  
5 inspector pursuant to Subsection D of Section 69-14-4 NMSA 1978  
6 may file a written petition for review before the board within  
7 twenty days after service of the notice provided in Subsection  
8 E of Section 69-14-4 NMSA 1978. Unless a timely petition for  
9 review is made, the decision of the inspector shall be final  
10 and not subject to judicial review.

11 B. If a timely petition for review is made, the board  
12 shall consider the petition within ninety days after receipt of  
13 the petition. The board shall notify the petitioner and the  
14 inspector of the date, time and place of the review.

15 C. The board shall review the record compiled before  
16 the inspector and shall allow any party to submit arguments.  
17 Prior to the date set for review, if a party shows to the  
18 satisfaction of the board that there is good reason to allow  
19 additional evidence on an issue being challenged, the board  
20 shall allow additional evidence to be taken. Based on the  
21 review of the evidence and the arguments of the parties, the  
22 board shall sustain, modify or reverse the action of the  
23 inspector.

24 D. The board shall notify the parties of the action  
25 taken by the board and the reasons for that action. A person

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1 who is adversely affected by a decision of the board pursuant  
2 to this section may appeal to the district court pursuant to  
3 the provisions of Section 39-3-1.1 NMSA 1978."

4 Section 12. A new section of the Mining Safety Act is  
5 enacted to read:

6 "[NEW MATERIAL] STANDARD OF EVALUATION OF VARIANCES--  
7 EFFECT OF VARIANCES GRANTED.--

8 A. A person affected by a rule adopted under the  
9 Mining Safety Act may petition the inspector for a variance.

10 B. A variance of a mandatory safety standard may be  
11 granted upon a determination that:

12 (1) an alternative method of achieving the  
13 result of the standard or rule exists that will at all times  
14 guarantee no less than the same measure of protection afforded  
15 by the standard or rule; or

16 (2) application of the standard or rule would  
17 diminish the safety of the affected miners.

18 C. All variances granted pursuant to this section  
19 shall have only future effect.

20 D. The inspector shall fully investigate any proposed  
21 variance with the requesting mine operator and the respective  
22 representative of miners, or a reasonable number of miners that  
23 will be affected by the proposed variance. The proposed  
24 variance shall be posted at the mine when submitted to the  
25 inspector to ensure that all miners have the opportunity to

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1 review and make comments to the inspector. Investigation shall  
2 begin within ninety days of receipt of the proposed petition,  
3 and the inspector shall make a final determination no longer  
4 than one hundred eighty days from the receipt of the proposed  
5 petition.

6 E. A person affected by the final decision of the  
7 inspector may appeal to the board within thirty days of the  
8 inspector's final decision. The appeal shall be in writing and  
9 sent to the board's chair. The board shall review the appeal  
10 within ninety days and may hold a hearing. The board shall  
11 make a final decision regarding the variance request.

12 F. A person who is adversely affected by a decision  
13 of the board pursuant to this section may appeal to the  
14 district court pursuant to the provisions of Section 39-3-1.1  
15 NMSA 1978."

16 Section 13. Section 69-12-7 NMSA 1978 (being Laws 1933,  
17 Chapter 153, Section 34) is amended to read:

18 "69-12-7. ACCIDENTS--WRITTEN REPORT.--A report in writing  
19 shall be made to the state mine inspector of each [compensable]  
20 mine accident. [~~Such reports shall give the name, age and~~  
21 ~~occupation of the injured person, the date of accident, name~~  
22 ~~and location of mine, the cause of accident, actual work being~~  
23 ~~performed when injured, nature or result of injury, probable~~  
24 ~~length of disability; this] The report shall be made within one  
25 month of the date of [injury. ~~Provided, that a summary of all~~~~

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1 ~~accidents occurring each month will answer~~ the accident.

2 Submitting a copy of the report required under the Federal Mine  
3 Safety and Health Act of 1977 to the inspector shall satisfy  
4 the requirements of [~~this act provided the data required is~~  
5 ~~included~~] Chapter 69 NMSA 1978."

6 Section 14. Section 69-14-1 NMSA 1978 (being Laws 1933,  
7 Chapter 153, Section 38, as amended) is amended to read:

8 "69-14-1. MINE FOREMEN--~~[ASSISTANT FOREMEN]~~ MINE  
9 EXAMINERS--~~[SHOTFIRERS--QUALIFICATION]~~ CERTIFICATION BY STATE  
10 MINE INSPECTOR.--The state mine inspector [~~with the gratis~~  
11 ~~assistance of local mine operators, shall within one year from~~  
12 ~~the passage of this act complete the qualifications of]~~ may  
13 certify, recertify or discipline persons to act as mine foremen  
14 [~~assistant mine foremen]~~ and mine examiners [~~and shotfirers and~~  
15 ~~after one year from the date of passage of this act]~~. No mine  
16 operator shall employ any person as underground mine foreman  
17 [~~assistant mine foreman]~~, mine examiner or [~~shotfirer]~~ surface  
18 mine foreman unless [~~he~~] that person has been [~~qualified~~  
19 certified] by the state mine inspector for such position.  
20 [~~Provided, however, that when there are insufficient thus~~  
21 ~~qualified shotfirers at any mine, the mine foreman and mine~~  
22 ~~examiner may examine any applicant as to his fitness to fill~~  
23 ~~the position of shotfirer and, having been satisfied of such~~  
24 ~~fitness, may employ him in this capacity until the next visit~~  
25 ~~of the mine inspector.]"~~

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1 Section 15. Section 69-14-2 NMSA 1978 (being Laws 1933,  
2 Chapter 153, Section 40, as amended) is amended to read:

3 "69-14-2. METHODS OF ~~[QUALIFICATION]~~ CERTIFICATION--  
4 CERTIFICATES FROM OTHER STATES--PERMITS--EXAMINATIONS.--The  
5 state mine inspector shall ~~[qualify]~~ certify persons for the  
6 positions of mine foreman ~~[assistant mine foreman]~~ and mine  
7 examiner ~~[and shotfirer]~~ and issue ~~[permits]~~ certificates  
8 accordingly as follows:

9 A. ~~[he]~~ the state mine inspector may recognize the  
10 foreman's ~~[assistant foreman's]~~ or mine examiner's ~~[or~~  
11 ~~fireboss's or shotfirer's]~~ certificate issued by any other  
12 state and issue ~~[permits]~~ certificates accordingly;

13 ~~[B. he shall grant permits without examination to~~  
14 ~~mine workers who have held such positions in underground coal~~  
15 ~~mines of New Mexico for one year prior to the passage of this~~  
16 ~~act if he and the local mine employer deem such persons~~  
17 ~~competent;~~

18 ~~G. he]~~ B. the state mine inspector shall hold  
19 written ~~[examination]~~ examinations, at times and places to be  
20 given out at least thirty days in advance, to all persons  
21 desiring to secure mine foreman ~~[and]~~ certificates or mine  
22 examiner ~~[permits and to all others holding such positions or~~  
23 ~~mine workers holding certificates from other states of whose~~  
24 ~~competency he or the mine employer is not able to judge.~~  
25 Similarly, ~~he shall hold oral examinations for shotfirer]~~

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1 certificates; and

2 C. the state mine inspector shall require that any  
3 applicant for examination to the position of mine foreman or  
4 mine examiner shall submit a completed application at least  
5 thirty days prior to the examination date and shall meet the  
6 experience requirements of this section. Every person desiring  
7 to secure a mine foreman's certificate [~~examiner's permit~~] and  
8 not already in such position or not holding such certificate  
9 from another state shall first serve as [~~shotfirer~~] a mine  
10 examiner for six months [~~similarly, six months as mine examiner~~  
11 ~~shall be required before examination for mine foreman's or~~  
12 ~~assistant mine foreman's positions. Also any person not~~  
13 ~~employed in the capacity of mine foreman, assistant mine~~  
14 ~~foreman, mine examiner or shotfirer, and not holding~~  
15 ~~certificate from another state, who desires examination for~~  
16 ~~such position] and shall have [~~at least two years' experience~~  
17 ~~in and about coal mines to participate in mine examiner's~~  
18 ~~examination and] at least four years' coal mine experience to  
19 participate in the foreman's [~~or assistant foreman's~~  
20 ~~examinations] examination. A person who holds a certificate  
21 for surface mine foreman who wishes to take the underground  
22 foreman test must have a minimum of four years' experience in  
23 underground mine workings. A person who holds an underground  
24 mine foreman certificate and who wishes to participate in the  
25 surface mine foreman examination must have at least two years'~~~~~~

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1 surface mine experience."

2 Section 16. Section 69-14-3 NMSA 1978 (being Laws 1933,  
3 Chapter 153, Section 41, as amended) is amended to read:

4 "69-14-3. QUALIFICATIONS FOR CERTAIN POSITIONS.--~~[Any~~  
5 ~~applicant for examination to position of foreman, assistant~~  
6 ~~foreman, mine examiner or shotfirer shall satisfy the mine~~  
7 ~~inspector that he is physically fit and has reached the age of~~  
8 ~~majority. He shall then be examined by the mine inspector~~  
9 ~~orally and in writing as to the provisions of the New Mexico~~  
10 ~~mining law, the use and care of the flame safety lamp, coal~~  
11 ~~mine ventilation, coal mining methods and general principles of~~  
12 ~~coal mine safety. He shall furnish recommendations as to his~~  
13 ~~capacity for such position from five citizens of the United~~  
14 ~~States, at least two of whom shall reside in New Mexico.] The~~  
15 mining safety board may, by rule, enact requirements, including  
16 requirements for applications, examinations and qualifications,  
17 for the certification of any mine personnel required to be  
18 qualified by state or federal law."

19 Section 17. Section 69-14-4 NMSA 1978 (being Laws 1933,  
20 Chapter 153, Section 42, as amended) is amended to read:

21 "69-14-4. [~~COMPETENCY PERMITS--POSTING--REVOCATION~~  
22 ~~PROCEDURE] CERTIFICATION PERIOD--RECERTIFICATION--DISCIPLINE--~~  
23 APPEAL.--~~[Any person working in or about any coal mine in the~~  
24 ~~state as mine foreman, assistant mine foreman or mine examiner~~  
25 ~~shall keep his permit of competency posted in a conspicuous~~

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1 ~~place in the mine office. Any permit of competency may be~~  
2 ~~revoked in case the holder of the permit willfully or~~  
3 ~~persistently fails to perform and carry out the duties required~~  
4 ~~of the holder by the provisions of Chapter 69 NMSA 1978 or has~~  
5 ~~been found to be incompetent after employment. Such action~~  
6 ~~shall be taken only after charges made in writing and after due~~  
7 ~~hearing before the mining safety advisory board. Upon the~~  
8 ~~revocation of any such permit, the holder shall return it to~~  
9 ~~the state mine inspector.]~~

10 A. Certification for mine personnel shall be issued  
11 for a period of five years. All mine personnel certified by  
12 the state mine inspector prior to the effective date of this  
13 2007 act shall have their certification period extended five  
14 years. Each certified person has the responsibility to notify  
15 the state mine inspector of any change in address or change in  
16 mine employment within thirty days of the change. Failure to  
17 provide current information may result in suspension of  
18 certification.

19 B. Certified persons may apply for recertification  
20 within twelve months prior to the end of the certification  
21 period. Every certification shall automatically expire on the  
22 last day of the certification period if the official has not  
23 recertified prior to that date. Recertification will require  
24 the applicant to submit an application and appropriate  
25 documentation as required by the state mine inspector at least

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1 thirty days prior to the testing date.

2 C. The state mine inspector may refuse to certify or  
3 recertify or may suspend or revoke any certification held or  
4 applied for under Chapter 69 NMSA 1978 upon grounds that the  
5 applicant or certified person:

6 (1) gave false or forged evidence to the state  
7 mine inspector to obtain certification;

8 (2) is grossly negligent or incompetent in  
9 duties as a certified person;

10 (3) has failed to maintain certification;

11 (4) has violated or aided or abetted any person  
12 in a violation of the Federal Mine Safety and Health Act of  
13 1977 or the state mine safety laws; or

14 (5) has been disciplined in another state that  
15 certifies mine personnel.

16 D. If the state mine inspector contemplates taking  
17 any of the actions in Subsection C of this section for any of  
18 the reasons provided in that subsection, the state mine  
19 inspector shall provide written notice to the applicant or  
20 certified person. The notice shall include a statement that  
21 the state mine inspector has sufficient evidence that, if not  
22 rebutted or explained, will justify the state mine inspector in  
23 taking the contemplated action, that indicates the general  
24 nature of the evidence and that provides the applicant or  
25 person at least twenty days to submit written evidence to rebut

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1 or explain the allegations.

2 E. If, after the response period ends, the state mine  
3 inspector takes any action of a type specified in Subsection C  
4 of this section, the state mine inspector shall serve upon the  
5 applicant or certified person a written notice of the action  
6 containing a statement that the applicant or certified person  
7 may file a petition for review with the mining safety board  
8 pursuant to the Mining Safety Act."

9 Section 18. REPEAL.--Sections 69-4-1, 69-4-3 through  
10 69-4-10, 69-5-8, 69-5-11, 69-5-13, 69-5-15, 69-7-2 through  
11 69-7-7, 69-8-5, 69-8-7 through 69-8-10, 69-8-14, 69-12-1,  
12 69-12-2, 69-12-5, 69-12-6, 69-13-1 through 69-13-3, 69-14-5  
13 through 69-14-18, 69-18-14, 69-31-16 and 69-35-18 through  
14 69-35-20 NMSA 1978 (being Laws 1933, Chapter 153, Sections 1  
15 and 3 through 10, Laws 1953, Chapter 82, Section 3, Laws 1933,  
16 Chapter 153, Sections 17, 19 and 21, Laws 1889, Chapter 103  
17 Sections 2 through 5, Laws 1887, Chapter 34, Sections 1 and 2,  
18 Laws 1961, Chapter 136, Sections 5, 7 through 10 and 14, Laws  
19 1933, Chapter 153, Sections 28, 29, 32, 33, 35 through 37 and  
20 43 through 55, Laws 1882, Chapter 57, Section 9 and Laws 1933,  
21 Chapter 153, Sections 101, 245 and 303 through 305, as amended)  
22 are repealed.